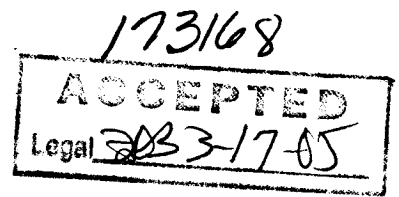


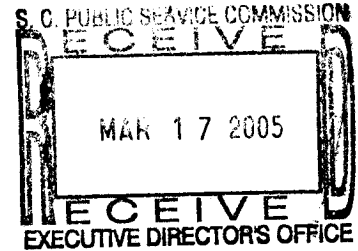
# ELLIS:LAWHORNE

John F. Beach  
Direct dial: 803/343-1269  
[jbeach@ellislawhorne.com](mailto:jbeach@ellislawhorne.com)



March 15, 2005

The Honorable Charles L.A. Terreni  
Executive Director  
**SC Public Service Commission**  
P.O. Drawer 11649  
Columbia, SC 29211



RE: Application of Total Environmental Solutions, Inc. for Adjustment of Rates  
and Charges for Provision of Water and Sewer Collection  
**Docket No. 2004-90-W/S, Our File No. 557-10022**

Dear Charles:

Enclosed for filing please find the original and ten (10) copies of Total Environmental Solutions, Inc.'s ("TESI") **Notice of Placing Rates Into Effect Under Bond and Motion to Set Bond** for filing in the above-referenced docket.

By copy of this letter, I am hereby serving all parties of record with a copy of these documents and enclose my certificate of service to that effect.

Please stamp "received" the additional copy of this letter, and return in the enclosed envelope.

With kind regards, I am

Yours truly,

John F. Beach

JFB/cr

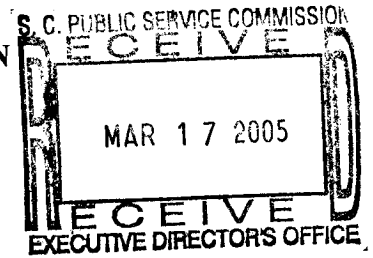
cc: Mr. Paul Maeder (via first-class mail service)  
Mr. Bill Schoening (via first-class mail service)  
Mr. Gary Shambaugh, w/o attachment (via first-class mail service)  
All parties of record

## Attachments

B:\APPS\OFFICE\WPWIN\WPDOCS\TESI\NEW RATE CASE\Duke-filingltr.wpd

**STATE OF SOUTH CAROLINA**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**DOCKET NO. 2004-90-W/S**



IN THE MATTER OF: )

Total Environmental Solutions, Inc. )  
Application for Increase in Rates and )  
Charges for Water and Sewer Services )

---

**NOTICE OF PLACING  
RATES INTO EFFECT  
UNDER BOND**

Petitioner, Total Environmental Solutions, Inc. ("TESI") by and through its undersigned counsel, hereby provides notice to the South Carolina Public Service Commission (the "Commission") and all parties of record in this proceeding that, pursuant to S.C. Code Ann. § 58-5-240(D), as amended, TESI is placing certain rates and charges into effect under bond during the appeal and until final disposition of this case.

The details of this Notice are set forth herein below:

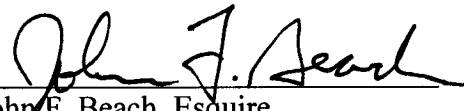
1. The Commission issued Order Nos. 2004-434 and 2004-574 (collectively, the "Orders") in this docket partially granting TESI's request for a rate increase. The Commission granted the subject rate increase in three annual phases.
2. TESI has appealed certain aspects of the Orders in the Court of Common Pleas for Richland County through Docket No. 05-CP-40-0986 (the "Appeal").
3. S.C. Code Ann. §58-5-240(D), as amended, gives TESI the right to place certain of the rates requested by TESI, but not approved by the Commission, into effect under bond during the Appeal and until final disposition of this case.
4. TESI asserts several assignments of error in the Appeal. Among other things, TESI contends that the Commission erred in implementing the approved rates in

phases because that decision 1) requires TESI to operate under rates that are *per se* unreasonable in light of the Commission holding that a fair operating margin is 20%, and 2) confiscates TESI's statutory right to seek rate relief on the 18-month cycle.

5. Each assignment of error in the Appeal, if established, would result in a corresponding increase in TESI's approved rates. Without waiving any of its other assignments of error, TESI is placing the Commission-approved phase 3 rates into effect immediately, pending final outcome of the Appeal and any remand. These are the rates that would result if an appellate court reversed the Orders based solely upon the assignment of error summarized in paragraph 4, above. The subject rates are set forth in attached Schedule A.

6. Contemporaneously with the filing of this Notice, TESI is also filing a Motion to Set Bond, pursuant to S.C. Code Ann., § 58-5-240(D). TESI intends to place the attached rates into effect once the Commission has set an appropriate bond in response to that motion.

**ELLIS, LAWHORNE & SIMS, P.A.**



John F. Beach, Esquire  
John J. Pringle, Jr., Esquire  
1501 Main Street, 5<sup>th</sup> Floor  
P.O. Box 2285  
Columbia, South Carolina 29202  
Telephone: (803) 779-0066  
Facsimile: (803) 799-8479

Attorneys for Total Environmental  
Solutions, Inc.

Columbia, South Carolina  
March 15, 2005

## APPENDIX A

**TOTAL ENVIRONMENTAL SOLUTIONS, INC.**  
**2299 Dr. Johns Rd.**  
**Westminster, S.C. 29693**

Docket No. 2004-90 -W/S  
Appellate Docket No. 05-CP-40-0986

### SCHEDULE OF RATES AND CHARGES

**AVAILABILITY:** Available within the Company's service area.

**APPLICABILITY:** **Residential** rates apply to all lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is permanently affixed or located.

**RV** rates apply to all RV lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is not permanently affixed or located.

**Commercial** rates apply to any commercial or master-metered residential customer for any purpose.

**Commercial/Condominium** applies to any condominium complex within the Company's service area. Commercial customer is provided with a single monthly bill based upon the number of condominium units in the applicable complex multiplied by the applicable per-unit rate set forth below.

### WATER SERVICE RATES AND CHARGES

WATER MONTHLY RATES			
Effective Date	Residential Per Lot	RV Section Per Lot	Commercial Per Tap
	Commercial/Condominium Per Unit		
05/01/05	\$53.62	\$40.22	\$77.93

### NONRECURRING CHARGES:

**CONNECTION FEE (New Customer)**

**\$250.00 per Residential or RV Lot,  
Condominium Unit, or SFE\***

This charge is to reimburse the Company for all costs, including labor and materials, associated with establishing the initial service connection.

**RE-CONNECTION FEE**

**\$50.00 per Residential or RV Lot,  
Condominium Unit, or SFE\***

This charge is to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make deposit, fraudulent, or seasonal use. Customers who ask to be reconnected within ten months of disconnection will be charged the monthly utility rate for the service period they were disconnected. The Reconnection Fee shall also be due prior to reconnection if sewer service has been disconnected at the request of the customer.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a customer is less than one (1). If the equivalency rating of a customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the water system is requested.

**BILLING OF TENANTS**

The Utility will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure to pay for services rendered to a tenant may result in service interruptions.

**CONSTRUCTION STANDARDS:**

The Utility requires all construction to be performed in accordance with generally accepted engineering standards, at a minimum. The Utility from time to time may require that more stringent construction standards be followed.

**EXTENSION OF UTILITY SERVICE LINES AND MAINS**

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service, unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

\* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

**SEWER SERVICE RATES AND CHARGES**

SEWER MONTHLY RATES			
Effective Date	Residential Per Lot	RV Section Per Lot	Commercial Per Tap
	Commercial/Condominium Per Unit		
05/01/05	47.86	\$35.90	\$52.92

**NONRECURRING CHARGES:**

**CONNECTION FEE (New Customer)**

**\$400.00 per Residential or RV Lot,  
Condominium Unit, or SFE\***

This charge is to reimburse the Company for all costs, including labor and materials associated with establishing the initial service connection.

**RE-CONNECTION FEE**

**\$250.00 per Connection**

This charge is to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make deposit, fraudulent, or seasonal use. Customers who ask to be reconnected within ten months of disconnection will be charged the monthly utility rate for the service period they were disconnected. The Reconnection Fee shall also be due prior to reconnection if sewer service has been disconnected at the request of the customer.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a customer is less than one (1). If the equivalency rating of a customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the water system is requested.

**BILLING OF TENANTS**

The Utility will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure to pay for services rendered to a tenant may result in service interruptions.

### **TOXIC AND PRETREATMENT EFFLUENT GUIDELINES**

The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR §129.4 and §401.15. Additionally, pollutants or pollutant properties subject to 40 CFR §403.5 and §403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

### **CONSTRUCTION STANDARDS:**

The Utility requires all construction to be performed in accordance with generally accepted engineering standards, at a minimum. The Utility from time to time may require that more stringent construction standards be followed.

### **EXTENSION OF UTILITY SERVICE LINES AND MAINS**

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to an appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule and to comply with the guidelines and standards hereof, shall not be denied service, unless treatment capacity is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving sewer system.

In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding wastewater treatment capacity to the affected sewer system.

\* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

**STATE OF SOUTH CAROLINA**  
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 2004-90-W/S**

IN THE MATTER OF:	)	
	)	
Total Environmental Solutions, Inc.	)	<b>MOTION TO SET BOND</b>
Application for Increase in Rates and	)	
Charges for Water and Sewer Services	)	
<hr style="width:40%; margin-left:0;"/>		

Petitioner, Total Environmental Solutions, Inc. (“TESI”), by and through its undersigned counsel, respectfully moves the South Carolina Public Service Commission (the “Commission”), pursuant to S.C. Code Ann. § 58-5-240 (D) (as amended) to set a fair and reasonable bond under which TESI will charge certain rates to the customers of Foxwood Hills during TESI’s appeal of the Commission’s final Orders in this proceeding. In support of this motion, TESI would show as follows:

1. The Commission issued Order Nos. 2004-434 and 2004-574 (collectively, the “Orders”) in this docket partially granting TESI’s request for a rate increase. The Commission granted the subject rate increase in three annual phases.
2. TESI has appealed certain aspects of the Orders in the Court of Common Pleas for Richland County through Docket No. 05-CP-40-0986 (the “Appeal”).
3. Pursuant to S.C. Code Ann. §58-5-240(D), as amended, TESI will place into effect under bond certain rates addressed in the Appeal that are in addition to those approved in the Orders, as set forth on Schedule A attached hereto (the “Appeal Rates”), during the Appeal and until final disposition of this case, including any remand.



3. S.C. Code Ann., §58-5-240 (D) requires as follows:

Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons, corporations, or municipalities, respectively, entitled to the amount of the excess, if the rate or rates put into effect are finally determined to be excessive; or there may be substituted for the bond other arrangements satisfactory to the Commission for the protection of parties interested.

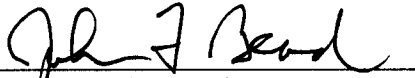
4. The annual differential between the Appeal Rates and the Commission-approved phase 1 rates is \$218,351. The annual differential between the Appeal Rates and the Commission-approved phase 2 rates is \$109,203. The Orders require the Phase 2 rates to be placed into effect on 12/01/05, and the Phase 3 rates on 12/01/06 (see, Appendix A to Order on Reconsideration). Consequently, if TESI places the Appeal Rates into effect on May 1, 2005, they would only be in effect for seven months during the Commission-approved phase 1 period, and 12 months during the Commission-approved phase 2 period. Thus, the differential between the Appeal Rates and the Commission-approved rates is  $(7 \times \$18,196) = \$127,372 + \$109,203 = \$236,575$ . This is the *maximum* amount of additional revenue that TESI's Appeal Rates could possibly generate in excess of the Commission-approved rates.

5. TESI proposes to post an irrevocable letter of credit from a United States banking institution insured by the Federal Deposit Insurance Company in the amount of \$300,795. This takes the maximum additional revenues, assumes that the appeal will take two years, calculates the interest on the additional revenue stream at 12% (\$42,813.65), and then multiplies that interest result by 1.5 in order to fully protect the rate-payer. TESI believes that this methodology is consistently with the Commission's past precedent in such bond matters. TESI will also cause to be mailed to each of its affected customers a notice containing the rate information set forth in Schedule A, which shows the rates TESI will place in effect under bond.

3. TESI is informed and believes that the above satisfies the requirements of S.C. Code Ann., §58-5-240(D) (as amended) and that TESI is therefore entitled to place the proposed rates into effect under the aforesaid bond.

WHEREFORE, TESI requests that this Commission issue its Order setting the bond under which TESI will place the Appeal Rates into effect pending final disposition of this appeal.

**ELLIS, LAWHORNE & SIMS, P.A.**



John F. Beach, Esquire  
John J. Pringle, Jr., Esquire  
1501 Main Street, 5<sup>th</sup> Floor  
P.O. Box 2285  
Columbia, South Carolina 29202  
Telephone: (803) 779-0066  
Facsimile: (803) 799-8479

Attorneys for Total Environmental Solutions,  
Inc.

Columbia, South Carolina  
March 15, 2005

## APPENDIX A

**TOTAL ENVIRONMENTAL SOLUTIONS, INC.**  
**2299 Dr. Johns Rd.**  
**Westminster, S.C. 29693**

Docket No. 2004-90 -W/S  
Appellate Docket No. 05-CP-40-0986

### SCHEDULE OF RATES AND CHARGES

**AVAILABILITY:** Available within the Company's service area.

**APPLICABILITY:** **Residential** rates apply to all lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is permanently affixed or located.

**RV** rates apply to all RV lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is not permanently affixed or located.

**Commercial** rates apply to any commercial or master-metered residential customer for any purpose.

**Commercial/Condominium** applies to any condominium complex within the Company's service area. Commercial customer is provided with a single monthly bill based upon the number of condominium units in the applicable complex multiplied by the applicable per-unit rate set forth below.

### WATER SERVICE RATES AND CHARGES

WATER MONTHLY RATES			
Effective Date	Residential Per Lot	RV Section Per Lot	Commercial Per Tap
	Commercial/Condominium Per Unit		
05/01/05	\$53.62	\$40.22	\$77.93

### NONRECURRING CHARGES:

**CONNECTION FEE (New Customer)**

**\$250.00 per Residential or RV Lot,  
Condominium Unit, or SFE\***

This charge is to reimburse the Company for all costs, including labor and materials, associated with establishing the initial service connection.

**RE-CONNECTION FEE**

**\$50.00 per Residential or RV Lot,  
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This charge is to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make deposit, fraudulent, or seasonal use. Customers who ask to be reconnected within ten months of disconnection will be charged the monthly utility rate for the service period they were disconnected. The Reconnection Fee shall also be due prior to reconnection if sewer service has been disconnected at the request of the customer.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a customer is less than one (1). If the equivalency rating of a customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the water system is requested.

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\* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

**SEWER SERVICE RATES AND CHARGES**

SEWER MONTHLY RATES			
Effective Date	Residential Per Lot	RV Section Per Lot	Commercial Per Tap
	Commercial/Condominium Per Unit		
05/01/05	47.86	\$35.90	\$52.92

**NONRECURRING CHARGES:**

**CONNECTION FEE (New Customer)**

**\$400.00 per Residential or RV Lot, Condominium Unit, or SFE\***

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**RE-CONNECTION FEE**

**\$250.00 per Connection**

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The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR §129.4 and §401.15. Additionally, pollutants or pollutant properties subject to 40 CFR §403.5 and §403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

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In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding wastewater treatment capacity to the affected sewer system.

\* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

**STATE OF SOUTH CAROLINA**  
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 2004-90-W/S**

IN THE MATTER OF: )  
 )  
Total Environmental Solutions, Inc. )  
Application for Increase in Rates and )  
Charges for Water and Sewer Services )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the Notice of Placing Rates into Effect Under Bond, and Motion to Set Bond to be served on the following parties of record by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

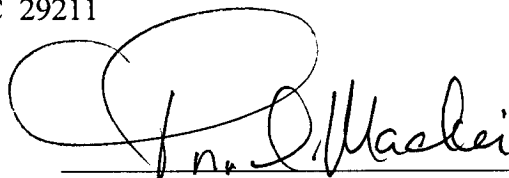
F. David Butler, Esquire  
General Counsel  
**SC Public Service Commission**  
P.O. Drawer 11649  
Columbia, SC 29211

Elliott Elam, Staff Attorney  
**SC Department of Consumer Affairs**  
PO Box 5757  
Columbia, SC 29250

H. Asby Fulmer, III  
**Fulmer Law Firm, PA**  
PO Box 1330  
Summerville SC 29484

Mason A. Summers, Esquire  
DHEC Staff Counsel  
**SC Department of Health & Environmental Control**  
2600 Bull Street  
Columbia SC 29201-1708

Florence Belser, Esquire  
Office of Regulatory Staff  
Legal Department  
PO Box 11263  
Columbia SC 29211

  
Carol Roof  
Trina L. Mackie

Columbia, South Carolina  
March 15, 2005